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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDITH MACIAS, individually and on  
behalf of similarly situated  
individuals; HOTON DURAN;  
TIFFANY HUYNH; AURA MENDIETA;  
WILLIAM LABOY; MIGUEL ACOSTA;  
CRUZ ACOSTA; CUAUHEMOC  
TORAL; and TERESA VILLEGAS,

Plaintiffs,

vs.

THOMAS J. TOMANEK; and  
MARK GARIBALDI, individually  
and doing business as THE  
GARIBALDI COMPANY,

Defendants.

Case No. C07-3437 JSW

JOINT APPLICATION AND STIPULATION  
FOR ISSUANCE OF ORDER STAYING  
PROCEEDINGS PENDING MEDIATION;  
[PROPOSED] ORDER

The parties to this action, by and through their attorneys of record, hereby apply for and stipulate to issuance of an order staying the briefing on defendants' pending objections to the report and recommendation of the magistrate judge to enable the parties to attempt to mediate a resolution to this case, the related Ninth Circuit appeal and a related state action. There is good cause to grant the request based on the following:

1. On January 8, 2008, this Court granted defendants' motion pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1) and dismissed plaintiffs' RICO claims with prejudice

1 and their related state claims for lack of subject-matter jurisdiction. (Docs. 35, 36.)  
2 Thereafter, defendants moved to be declared the prevailing parties under California law  
3 based on a contractual attorneys' fees provision, seeking an award of attorneys' fees  
4 and costs. (Docs. 37-42, 54-57.) This Court referred the matter to Magistrate Judge  
5 Laporte for a report and recommendation. (Doc. 43.)

6 2. On January 17, 2008, plaintiffs filed a case in Alameda Superior Court, case  
7 number HG08366602, alleging the same claims except for the RICO, negligence and  
8 breach of covenant of good faith and fair dealing claims.

9 3. On February 1, 2008, plaintiffs appealed this Court's dismissal of their RICO  
10 claims to the Ninth Circuit, case number 08-50261.

11 4. On March 11, 2008, Magistrate Judge Laporte issued a Report and  
12 Recommendation to Deny Defendants' Motion to be Declared Prevailing Parties and for  
13 an Award of Attorneys' Fees. (Doc. 62.)

14 5. On March 25, 2008, defendants filed objections to Magistrate Judge Laporte's  
15 report and recommendation and moved for de novo determination of their motion  
16 pursuant to Fed. R. Civ. P. 72(b). (Docs. 63, 64, 65, 66.) Plaintiffs' response to those  
17 objections is due on April 11, 2008.

18 6. On April 3, 2008, in a conference with a Ninth Circuit mediator, the parties  
19 agreed to stay the Ninth Circuit appeal and the state action while they attempted to  
20 mediate the entire dispute. After an informal exchange of information, the parties will  
21 attend a mediation before Charles Dyer in Menlo Park on a date in early June (the  
22 parties are currently in the process of picking that date).

23 7. The state case is set for a complex case management conference on April  
24 21, 2008. At that time, the parties will ask Judge Bonnie Sabraw to stay the action until  
25 after the attempted mediation.

26 Accordingly, the parties seek an order staying the briefing on defendants'  
27 objections to the magistrate judge's report and recommendation while they attempt  
28 mediation. If the mediation is unsuccessful, the parties agree to file a joint notice to that

1 effect with this Court and agree that plaintiffs' response to defendants' objections will be  
2 due within 10 days of the filing of that notice.

3 SO STIPULATED.

4 Respectfully submitted,  
5 BRANCART & BRANCART

6 Dated: April 7, 2008

7 /s/  
8 Elizabeth Brancart  
9 Attorneys for Plaintiffs<sup>1</sup>

10 ALLMAN & NIELSEN, P.C.

11 Dated: April 7, 2008

12 /s/  
13 Sara B. Allman  
14 Attorneys for Defendant  
15 Thomas J. Tomanek

16 FARBSTEIN & BLACKMAN

17 Dated: April 7, 2008

18 /s/  
19 John S. Blackman  
20 Attorneys for Defendant  
21 Mark Garibaldi

22 WENDEL ROSEN BLACK & DEAN, LLP

23 Dated: April 7, 2008

24 /s/  
25 Carl D. Ciochon  
26 Attorneys for Defendant  
27 Mark Garibaldi

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<sup>1</sup>As the e-filer, I attest that each of the other signatories hereto have concurred in the filing of this document.